

# HOUSE . . . . . No. 848

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Joseph F. Wagner**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the operating and management of rights of way.

PETITION OF:

NAME:

Joseph F. Wagner

DISTRICT/ADDRESS:

8th Hampden

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 886 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT RELATIVE TO THE OPERATING AND MANAGEMENT OF RIGHTS OF WAY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 5 of chapter 21E of the General Laws, as appearing in the 2006 Official Edition, is  
2 hereby amended by striking out subsection (j) and inserting in place thereof the following subsection:-

3 (j) An agency or authority of the commonwealth and a public utility company that owns, holds  
4 title to, possesses an easement in, or maintains any property interest in, a right of way that is a site at  
5 which the department has incurred costs for response actions shall not be liable to the commonwealth for  
6 those costs if the agency, authority, or public utility company, respectively, can establish by a  
7 preponderance of the evidence that:

8 (1) it is not the owner or operator of any building, structure, installation, equipment, pipe or  
9 pipeline, including any pipe into a sewer or publicly-owned treatment works, well, pit, pond, lagoon,  
10 impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft from which the  
11 release or threat of release has occurred;

12 (2) it is not a person or the successor to a person described in clauses (2), (3), (4) or (5) of  
13 paragraph (a);

14 (3) no act of the agency, authority, or public utility company, or of the agency's, authority's or  
15 public utility company's employee or agent, caused or otherwise contributed to the release or threat of  
16 release or caused the release or threat of release to become worse than it otherwise would have been;

17 (4) it notified the department immediately upon obtaining knowledge of a release or threat of  
18 release for which notification is required pursuant to, and in compliance with, section 7 or regulations  
19 promulgated pursuant thereto;

20 (5) it provided reasonable access, including moving utilities or disrupting service, to the site or  
21 vessel to employees, agents and contractors of the department to conduct response actions, and to other  
22 persons intending to conduct necessary response actions;

23 (6) if it has undertaken a response action or portion of a response action at the site, the agency,  
24 authority or public utility company conducted such response action or portion of a response action in  
25 compliance with the requirements of this chapter and the Massachusetts Contingency Plan; and

26 (7) it did not know or have reason to know of the presence of oil or hazardous material on the  
27 site when it came into possession of the right of way.

28 For purposes of this subsection, the phrase “public utility company” means the Massachusetts  
29 Wholesale Electric Company established pursuant to chapter 775 of the acts of 1975, or any successor  
30 thereto, Massachusetts municipal light departments organized under chapter 164 or any other special law,  
31 Massachusetts gas and electric companies made subject to the jurisdiction of the department of  
32 telecommunications and energy by any provision of law except chapter 110A of the General Laws and  
33 chapter 651 of the acts of 1910, as amended or the Massachusetts Bay Transportation Authority pursuant  
34 to section 41 of chapter 161A, as amended.